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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL

CATALDO, JULIAN

SANTIAGO, and SUSAN LYNN

HARVEY, individually and on behalf of all

others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688-RS

**PLAINTIFFS' PARTIAL OPPOSITION
TO GOOGLE'S MOTION TO SEAL
(DKT. 408)**

The Honorable Richard Seeborg

Courtroom 3 – 17th Floor

Action Filed: July 14, 2020

Trial Date: February 10, 2025

1 On June 28, 2024, Google requested to seal portions of the parties’ summary judgment
2 briefing. Dkt. 408. Pursuant to Local Rule 79-5(f)(4), Plaintiffs now respond to Google’s request.

3 Plaintiffs oppose just one part of Google’s request: the request to seal a sentence in Exhibit
4 34 to Plaintiffs’ summary judgment opposition. *See* Dkt. 397-9 (unredacted copy of Exhibit 34).
5 Exhibit 34 is a document that Google produced (with Bates label GOOG-RDGZ-00033245) in
6 which Google employees discuss issues related to app activity data and WAA-off data.

7 According to its sealing motion, Google seeks to “redact a single line [of Exhibit 34] that
8 contains sensitive information related to government requests, along with employee email
9 addresses.” Dkt. 408 at 5. Plaintiffs do not oppose Google’s request to redact employee email
10 addresses. Plaintiffs oppose only Google’s request to redact that “single line” regarding
11 “government requests.” *Id.*

12 This line that Google seeks to redact—and therefore make unavailable to the public,
13 including class members—is highly relevant to the claims and defenses in this case, including
14 because it undermines Google’s argument that (s)WAA-off data is “logged with random number
15 identifiers that cannot be joined with any person.” Dkt. 383 at 19 (Google’s MSJ). The line
16 illustrates how (s)WAA-off data is highly identifying, especially because Google’s supposed
17 “pseudonymous” data is still collected and logged using numerous Google-issued identifiers,
18 wholly managed and controlled by Google. *See* Dkt. 397-1 at 1, 6, 15-16. Notably, Google does
19 not seek to redact another portion of Exhibit 34 which explains how Google can “link app events
20 collected by GA4F [Google Analytics for Firebase] to GAIA ID [the “Google Account” identifier]
21 *even if end users turn off WAA.*” Dkt. 397-9 (emphasis added). That statement alone creates
22 triable issues of fact about the nature of the at-issue data, and in Plaintiffs’ view, the statement
23 refutes Google’s argument that (s)WAA-off data is not associated with “personal information,” a
24 term Google defines to include information that “can be reasonably linked” to “your Google
25 account.” Dkt. 383 at 16-17, 21. The statement is also relevant to why there is a triable issue of
26 fact as to whether a reasonable user would expect her “Google Account” to contain all data
27 associated with Google identifiers. *See* Dkt. 397-1 at 1, 6, 15-16.

28 The line that Google seeks to redact then goes a step further than the unsealed admission

1 by discussing what would happen in the context of a “government request.” Dkt. 408 at 5.
 2 Reflecting on this topic, a Google employee admits (in the unredacted portion of Exhibit 34) that
 3 (s)WAA-off data “break[s] user expectations.” Dkt. 397-9. Plaintiffs cannot say more without
 4 revealing the substance of the material that Google seeks to keep under seal.

5 “A party seeking to seal a document filed with the court must (1) comply with [the relevant
 6 rules]; and (2) rebut ‘a strong presumption in favor of access’ that applies to all documents other
 7 than grand jury transcripts or pre-indictment warrant materials.” *Thomas v. MagnaChip*
 8 *Semiconductor Corp.*, 2017 WL 4750628, at *4 (N.D. Cal. Oct. 20, 2017) (citing *Kamakana v.*
 9 *City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). In the class action context,
 10 Google must meet the “compelling reasons” standard. *See In re Google Inc. Gmail Litig.*, 2014
 11 WL 10537440, at *4 (N.D. Cal. Aug. 6, 2016).

12 Google identifies no legitimate basis to seal the sentence in Exhibit 34, certainly no
 13 compelling reason. Contrary to Google’s assertion, this evidence would “assist the public in
 14 understanding this lawsuit,” Dkt. 408 at 5, including because it is relevant to the parties’ factual
 15 dispute over whether (s)WAA-off data is identifying. There is no reason for Google to unseal one
 16 admission in Exhibit 34 but redact the other admission. Moreover, in a certified class action—with
 17 a pending motion for summary judgment—Google should not be allowed to withhold from class
 18 members and the public evidence that refutes its characterization of the at-issue data, particularly
 19 when Google’s principal argument is that class members consented to the at-issue practices.

20 Aside from Exhibit 34, Plaintiffs take no position on Google’s request to seal.

21
 22 Dated: July 2, 2024

Respectfully submitted,

23 By: /s/ Mark Mao

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